

Title 18. Public Revenue
Sales and Use Tax Regulation 1603
Taxable Sales of Food Products

FINAL STATEMENT OF REASONS
Overview/Non-Controlling Summary

Update

There have been no changes in applicable laws or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Regulatory Action.

Specific Purpose

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code sections 6011 and 6012. This regulation is necessary to provide guidance to taxpayers affected by these statutes.

Factual Basis

Proposed Regulation 1603 discusses the application of tax to tips, gratuities, and service charges and distinguishes between optional tips, gratuities, and service charges that are paid at the customer's discretion and mandatory tips, gratuities, and service charges that are added to the bill by the retailer and part of the selling price of meals.

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

Local Mandate Determination

The State Board of Equalization has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

Response to Public Comment

On March 20, 2007, the State Board of Equalization held a public hearing on proposed amendments to Sales and Use Tax Regulation 1603, *Taxable Sales of Food Products*. In response to public comment, the Board referred Regulation 1603, to the fifteen-day file, recommending that a change be made to the published version of 1603, as follows:

- Subdivision (g)(1)(A), Example 2. The phrase “three or more” in the first sentence, and the word “none” toward the end of the example were deleted at the request of interested parties because they could be interpreted to be a standard requirement.
- Subdivision (g)(2)(B). A phrase that was inadvertently omitted from the published version of the regulation was added in the first sentence for clarity and conformity throughout the regulation.
- Subdivision (g)(2)(B). As directed by the Board, a paragraph was added at the end of the subdivision to clarify “automatically.”

- Subdivision (g)(2)(C). Two examples were added to illustrate the type of documentary evidence that may be used to overcome the presumption that the tip was added automatically.

Mr. Charles J. Moll III, representing the California Hotel and Lodging Association and Mr. Jon Barnato representing the California Restaurant Association expressed support for the Board's proposal to amend the regulation. No other oral or written comments were received.

The revised language to the regulation was placed in the rulemaking file on March 28, 2007 and mailed to interested parties that commented orally or in writing or asked to be informed of such revisions. No other oral or written comments were received during the 15 day notice period.

The regulation was adopted by the Board at the April 25, 2007 meeting, Chief Counsel Matters calendar.

Small Business Impact

The State Board of Equalization has determined that the adoption of the amendments to Regulation 1603 will have no significant statewide adverse economic impact directly affecting small business.

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendments to the regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

Cost Impact On Private Person Or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect On Housing Costs

No significant effect.

Federal Regulations

Regulation 1603 and the proposed changes have no comparable federal regulations.

Alternatives Considered

By its motion, the Board determined no alternative to promulgating the regulation would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the adopted regulation.

Authority

Section 7051, Revenue and Taxation Code.

Reference

Section 6011 and 6012, Revenue and Taxation Code.